

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

THE CATO CORPORATION,

Plaintiff,

v.

STAR FABRICS, INC.,

Defendant.

**COMPLAINT
FOR DECLARATORY RELIEF**

JURY TRIAL DEMANDED

1. Plaintiff The Cato Corporation (“Plaintiff” or “Cato”) brings this action for a Declaratory Judgment and other relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

2. Plaintiff is a Delaware corporation with a principal place of business at 8100 Denmark Road, Charlotte, North Carolina 28273, and is doing business in this State and District.

3. Upon information and belief, Defendant is a California corporation, and is doing business in this State and District.

4. Defendant purports to be the owner of U.S. Copyright Registration No. VA 1-699-747 (the “Design”).

5. Defendant, through its counsel, has accused Plaintiff of violating federal copyright laws through the sale of garments sold under SKU 40351630301014 (“Accused Garments”), which Accused Garments purportedly infringe the Design.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action on the following grounds:

- (a) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;
- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce; and
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged copyright rights.

7. This Court may declare the rights and other legal relations of the parties in this case pursuant to 28 U.S.C. § 2201, and Federal Rule of Civil Procedure 57 because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Plaintiff and Defendant.

8. This Court has personal jurisdiction over Defendant consistent with the principles underlying the U.S. Constitution and N.C. Gen Stat. § 1-75.4. Upon information and belief, Defendant has conducted business in this State and District and is subject to personal jurisdiction in this State and District by virtue of its contacts here. Upon information and belief, Defendant offers its products for sale through an online showroom and inventory that is available to customers and prospective customers in this State and District.

9. Venue is proper in the United States District Court for the Western District of North Carolina pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

10. Defendant has threatened Plaintiff's business, in this State and District and elsewhere, by accusing Plaintiff of unlawful actions through a demand letter dated April 4, 2016 (the "Demand Letter"). A copy of the Demand Letter is attached hereto as Exhibit A.

11. Defendant states in its Demand Letter that if Plaintiff fails to cease and desist immediately, it will file a complaint against Plaintiff "seeking immediate injunctive relief, as well as compensatory, statutory and punitive damages, attorneys' fees and costs of suit."

12. Upon information and belief, Defendant has yet to file a complaint against Plaintiff to enforce its purported copyright rights in the Design.

13. Upon information and belief, the Accused Garments do not infringe upon any valid and enforceable copyright rights Defendant may have in the Design.

14. Upon information and belief, Plaintiff has not violated any of Defendant's purported copyright rights and is not liable to Defendant for copyright infringement or any other federal, state or common law causes of action, in law or in equity.

15. Upon information and belief, Plaintiff is not liable to Defendant for any monetary damages, injunctive relief, attorney's fees, or any other damages that Defendant stated it would seek against Plaintiff.

16. There is an actual and substantial controversy between Plaintiff and Defendant of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court.

17. Plaintiff is entitled to a judgment declaring that it has not violated any purported copyright rights of Defendant under federal, state or common law and is not liable to Defendant for any claims, including any claim of copyright infringement concerning the Design.

WHEREFORE, Plaintiff respectfully prays the Court to enter a judgment:

A. Declaring that Plaintiff has not infringed or otherwise violated any purported rights of Defendant, including any provisions of 17 U.S.C. § 101 *et seq.* or any other asserted federal, state, or common law laws;

B. Granting Plaintiff its costs and awarding Plaintiff its reasonable attorneys' fees and other litigation expenses, together with such further legal and equitable relief as the Court may deem just and proper.

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 18, 2016

Respectfully submitted,

s/ J. Mark Wilson

J. Mark Wilson

N.C. State Bar No. 25763

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